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MAR 17 2010

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Benton County  
WATER CONSERVANCY BOARD

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MAR 17 2010

BENT 09-03

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Record of Decision

ROE and ROD Reviewed and Approved by BCWCB Members

Applicant: Mercer Canyons

Application Number: CS4-25639 <sup>HH</sup> ~~DP~~ with B Portion Per Assignment


The attached Report of Examination has been reviewed by the BCWCB members; and this Record of Decision was made at an open public meeting of the Benton County Water Conservancy Board held on March 12, 2010, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

(X) Approval:


The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

( ) Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed  Date: 3/12/2010  
Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

Approves  
Denies  
Recused  
Abstains  
Excused Absence

Signed  Date: 3/12/2010  
John Jaksch, Ph.D., Vice Chairman  
Benton County Water Conservancy Board

Approves  
Denies  
Recused  
Abstains  
Excused Absence

Signed  Date: 3/12/2010  
Matt Berg, Treasurer  
Benton County Water Conservancy Board

Approves  
Denies  
Recused  
Abstains  
Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 3/18/2010.

**BENTON COUNTY  
WATER CONSERVANCY BOARD**

**RECEIVED**

MAR 17 2010

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

*Application/Review for Change/Transfer*

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON

**Report of Examination**

Prepared by Members of the Benton County Water Conservancy Board

☒ Surface Water

Ground Water

DATE APPLICATION RECEIVED (September 2009 Public Notice as revised)	WATER RIGHT DOCUMENT NUMBER CS4-25639(HH) P NOTE: Water Right Designated Per Assignment	WATER RIGHT PRIORITY DATE April 22, 1977 Per Family Farm Development Permit (July 24, 1978)	BOARD-ASSIGNED CHANGE APPLICATION NUMBER BENT-09-03
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NAME  
Mr. Rob (Robert) Mercer, Mercer Canyons

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
46 Sonova Rd.	Prosser	WA	99350

**Changes Proposed:**    ☐ Change purpose    ☐ Add purpose    ☒ Add irrigated acres    ☐ Change point of diversion/withdrawal  
                                 ☐ Other (Temporary, Trust, Interties, etc.)    ☒ Change Place of Use \_\_\_\_\_

**SEPA**

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is:    ☒ Exempt (water right)                      Not exempt (proposed project)

The direct water right change/transfer described herein is exempt from SEPA review, as the water amount involved is under the SEPA threshold criteria.

**BACKGROUND AND DECISION SUMMARY**

**Existing Right**

MAXIMUM CUB FT/ SECOND 1.48 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 356.13	TYPE OF USE, PERIOD OF USE Seasonal irrigation of 90 acres, February 1 to November 15 Per Family Farm Development Permit (July 24, 1978)				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Diversion Point: (and as described on permit)	¼ NE1/4	¼ NE1/4	SECTION 6	TOWNSHIP N. 4N	RANGE 24 EWM	WRIA	COUNTY. Benton



**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED**

All within:

W1/2 of Section 28, T.5N, R.24 EWM.

**Proposed Use**

MAXIMUM CUB FT/ SECOND 1.48 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 297	TYPE OF USE, PERIOD OF USE Seasonal irrigation of 90 acres, February 1 to November 15 Per Family Farm Development Permit (July 24, 1978)				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Diversion Point: (and as described on permit)	¼ NE1/4	¼ NE1/4	SECTION 6	TOWNSHIP N. 4N	RANGE 24 EWM	WRIA	COUNTY. Benton

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED**

All within:

N1/2 of Section 21 and the NW1/4 of Section 20, 5N, R.23 EWM.

Note: See attachments (assignment) with parcel numbers.

*Should be NE 1/2  
Sec 20*

**Water Board Decision**

MAXIMUM CUB FT/ SECOND 1.48 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 297	TYPE OF USE, PERIOD OF USE Seasonal irrigation of 200 acres, February 1 to November 15 Per Family Farm Development Permit (July 24, 1978)				
SOURCE			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Diversion Point: (and as described on permit)	¼ NE1/4	¼ NE1/4	SECTION 6	TOWNSHIP N. 4N	RANGE 24 EWM	WRIA	COUNTY. Benton
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							

All within:

N1/2 of Section 21 and the NW1/4 of Section 20, 5N, R.23 EWM.

Note: See attachments (assignment) with parcel numbers.

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#### DESCRIPTION OF PROPOSED WORKS

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The existing permit is being used for irrigation of lands along the John Day Pool, Columbia River (Horse Heaven Hills). The water right is in good standing, subject to an assignment (per discussion with WADOE staff).

The applicant seeks to increase the flexibility of the water right by adding a place of use, and increasing irrigated acres, with a lower overall water duty (change to vineyard grounds). The water delivery will utilize the existing pump station, mainline, and water distribution system.

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#### DEVELOPMENT SCHEDULE

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BEGIN PROJECT BY THIS DATE: Immediately	COMPLETE PROJECT BY THIS DATE: By January 1, 2014	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: By January 1, 2015
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NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

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#### REPORT OF EXAMINATION

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Prepared by Members of the Benton County Water Conservancy Board

#### BACKGROUND

A change/transfer application for permit CS4-25639(HH)P (with assignment request to WADOE) was received and accepted by the Water Board in September 2009, with further information provided in January-March 2010, and a field tour conducted in December 2009.

The applicant requests changing (adding) the place of use, with an increase to irrigated acres, per changes to crop type. The applicant seeks greater flexibility in the use of the water right, and the change would be consistent with allowed use and changes under RCW 90.03.380.

The applicant's existing point of diversion is a Columbia River (John Day Pool) pump station owned by the applicant.

The existing water right is in good standing.



*Attributes of the water right as currently documented:*

Name on certificate, claim, permit: Patsy J Mercer (Existing, Pre-Assignment). Robert Mercer (with Assignment).

Water right document number: S4-25639(HH)P (per assignment designation)

As modified by permit change number: CS4-25639(HH)P

Priority date, first use: April 22, 1977

Water quantities: Qi: 1.48 cfs Qa: 356.13 acre-ft./year

Source: Surface Water, Columbia River Mainstem, John Day Pool

Point of diversion/withdrawal: See above and attachments

Purpose of use: Irrigation 90 acres, Per Family Farm Development Permit (July 24, 1978)

Period of use: February 1 to November 15

Place of use: See above and attachments

Existing provisions: See attached water right assignment form

*Tentative determination of the water right:*

See Water Board's Decision Above; water right is in permit assignment stage, in good standing.

*History of water use:*

The permit has been used in conjunction with other water rights to serve irrigation lands in the Horse Heaven Hills area. The permit was used for pasture development and use in 2008-09. The existing point of diversion serves several other water rights.

*Previous changes:*

Part of an earlier, multiple permit assignment designation; currently receiving new assignment of split/ownership.

SEPA:

As noted above, the water right change request is exempt.

**COMMENT AND PROTESTS**

Public notification for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

*Issues Raised by WADOE:*

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has discussed in detail the change request with WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD.

The Water Board has determined, via applicant data records and field inspection that the said water right is being beneficially used, and operating under the requirements of water code provisions and the issued permit.



*Protests:*

Date: None Received.

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

*Other:*

## **INVESTIGATION**

**Prepared by Members of the Benton County Water Conservancy Board**

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical representative/consultant and other interested parties; as well as discussions with the CRO-WADOE staff.

*Proposed project plans and specifications:*

As noted above, the applicant will continue to use this water right at a new place of use, with no change to the authorized water volumes, and with an increase to allowed irrigated acres. The water right will involve the use of one surface water pump station, already in existence.

The applicant's intent is to continue the use of CS4-25639(HH)P at its proposed place of use, as described above.

### **A. Key Technical Issues—Water Right Review:**

*This investigation has included several issues:*

*Tentative Determination:*

In order to make a water right change decision, the Water Board must make a tentative determination on the extent and validity of the right. The Water Board has made the tentative determination as displayed upon the first section of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

First, the water right applicant holds a valid water right permit (and assignment) in good standing, and it is on file with the WADOE. The water right is subject to the surface water code provisions, including RCW 90.03.380 for change/transfer provisions.

The permit (per assignment) is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.



Second, the change/transfer request must be consistent with RCW 90.03.380, and related water code statutes. The annual consumptive quantity (beneficial use) analysis for the existing 90 acres (using hand-lines with portable mainline) indicates that this land was seeded for mixed pasture grass in May-June 2008, and irrigated thereafter through 2009, for general livestock feed and some wildlife forage. The field visit suggested about (slightly over) 90 acres had been irrigated. Portable mainline was in place.

Within the 2008-2009 period, using the WIG (Prosser/McNary) and WSU AgWeatherNet (Whitcomb Island) estimates for the general area, pasture use water duties are estimated to be about:

- In 2008 (July-October): 30.66 inches/acre.
- In 2009 (full season): 37.3 inches/acre.
- 2008-2009 average: 34.0 inches/acre.
- Water application efficiencies for hand-lines at 85%, per Benton-Franklin Counter Water Conservancy Board and WADOE estimates, with total consumptive (ACQ) water use at:
  - ✓ 2008-2009 average at about: 40.0 inches/acre.
- The two-year, peak year average water use per acre is about 40.0 inches/acre (about 3.3 acre-ft./acre). For the 90 acre field, this yields an annual consumptive quantity (ACQ) estimate available for change/transfer, under RCW 90.03.380, of about 297 acre-ft.

Third, under the change request, the total amount of water withdrawal from the existing right and proposed change cannot exceed the amount within the currently permitted water right. The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

The Water Board notes that this request requires no expansion of the water right, as designated under the existing permit. The applicant intends to use the available water for new vineyard (wine grape) production, expanding irrigated acres up to a maximum of 200 acres, using a maximum of 297 acre-ft. (minimum water use of about 1.5 acre-ft./acre). The change will reduce the existing permit by 56 acre-ft. (16%).

Fourth, the Water Board has requested data on the field acreages for the permit and has verified that the change/transfer is based on the said acres (GPS farm data and field visit—approximately 90 irrigated acres). Also, portable main-line was evident in the field(s) area.

And fifth, based on the above information and analyses, the Water Board has determined that the full amount of the said water right for change/transfer is presented within the above "Board Decision" summary, and should be the amount not exceeded by the applicant within the proof of appropriation filing and within the superseding permit issued by WADOE.

#### *Hydrologic, and other technical investigations:*

First, based on detailed technical review/discussions with CRO-WADOE staff (previous changes from same point of diversion), it is concluded that the requested change/transfer will divert water from the same body of water (management area) as that allowed under the existing water right. The existing pump station will be used, located within the mainstem of the Columbia River, John Day Pool.

Second, the change request cannot create impairment. The Water Board has reviewed with the applicant information on potential impairment, along with the WADOE point of diversion and water right records (Columbia River Water Management Program mapping system), and concludes that impairment is not an issue for this change request. The point of diversion is consistent with the impairment standards under RCW 90.03.380, as a perfected water right.



As a senior (pre-1980) water right, there will be no impairment to any other water right withdrawing water from the John Day Pool.

Further, it is noted that:

- 1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or WADOE.
- 2) The Water Board has required the applicant to review impairment issues for the applicant's change request. This review indicates that the change action will not impair other water rights.
- 3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who divert water from sites within the John Day Pool.

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing permit and the conditions provided within this ROE/ROD.

And third, relative to the change request, the Water Board has previously evaluated extensive technical data and analyses related to any potential flow impacts affecting environmental resources, and determined that no empirically measurable, negative impacts will occur to environmental resources. This includes river hydrologic data, NOAA Fisheries flow-survival and river system survival data/analyses, University of Washington river system survival data, and data/analyses referenced by WADOE-sponsored studies.

#### **B. Water Right Adjudication Process:**

Water right adjudication does not affect this application.

#### **C. Verification of Existing Water Right:**

As noted above, the existing water use retains a permit of water right granted by the Washington State Dept. of Ecology (and with re-assignment). The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

#### **D. Field Examination:**

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, with an on-site visit during the month of December 2009 (and revisited in January 2010). Further, the Water Board is familiar with this area having recently reviewed other related applications and has previously toured the area with the applicant.

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination.

The field examination consisted of viewing the existing/proposed water use sites, existing pumping site, and the surrounding area. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.



#### **E. Technical Information, Investigations, or Reports Reviewed:**

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the Tribes, and to all parties requesting such copies. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

The Water Board has reviewed the applicant's SEPA compliance needs.

#### **F. Associated Rights and Uses:**

The subject permit is being beneficially used, and it is being used along with several other water rights in the nearby area by the applicant, as served by the existing Columbia River pump station. Other water rights are not directly affected by the proposed change/transfer.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

#### **G. Review of Potential Impairment:**

Because the proposed action will not increase the existing permit (perfected portion) water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual basis after the change/transfer, compared to existing permitted/certificated withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.



As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing surface water management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation—or increase existing allowed net annual withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

#### **H. Effect or Benefit to Public Interest:**

A recent Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380.

Nevertheless, the Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use. To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed annual water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not negatively change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the permit of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Benton County.



This action is consistent with the intent of RCW 90.03.380, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

### **I. Consideration of Pending Applications:**

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

### **FINDINGS AND CONCLUSIONS**

1. The permit of water right (with assignment) and beneficial use are verified.
2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.380 and the surface water code. The change/transfer request will not increase the allowed water right; the change/transfer will not increase allowed consumptive use from the designated source, as allowed by the water code.
3. There will be no increase in water withdrawal on an annual or seasonal basis. In addition, continued monitoring of the quantity of water pumped will help ensure that allowed water withdrawals are not exceeded, for the changes requested.
4. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes; and the use is allowed under RCW.90.03.380.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application.
6. The Water Board has reviewed the proposed project for SEPA compliance.
7. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.
8. No protests have been made by third parties on this application.



9. The proposed action is consistent with the intent of RCW 90.03.380 and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.

10. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.

11. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

## **RECOMMENDED PROVISIONS**

### **A. Provisions:**

The applicant's water right change for a change to place of use is conditioned by the following provisions:

1. The place of use for the water right is designated in the summary table above (under Water Board Decision).
2. The point of diversion is designated in the summary table above (under Water Board Decision).
3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, and taking into account cost-effectiveness for operations and economic viability.
4. The issued superseding permit for CS4-25639(HH)P shall not exceed 1.48 cfs, 297 acre-ft. annually, for seasonal irrigation use, 200 acres, February 1 to November 15.
5. By January 1, 2014, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.
6. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2015, unless further extended for good cause.
7. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.
8. The applicant has filed for an assignment of the permit that shall be completed jointly with this change/transfer decisions.
9. The applicant will provide the WADOE with measured water use data, for the existing and new place of use, consistent with the provisions of this change decision. The metered or measured data will ensure that water usage will not exceed authorized amounts, as well as that within adjacent water rights used at the existing points of diversion.
10. An approved measuring device(s) shall be installed and maintained for the sources (all points of diversion) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data (Qa and Qi) shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year typically.



11. The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

12. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

13. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

14. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law.

15. At the pump diversion sites, the applicant shall install and maintain water intake screens complying with standards prescribed by the Washington State Dept. of Fish and Wildlife.

**B. Mitigation Requirements:**

None are required.

**DECISION**

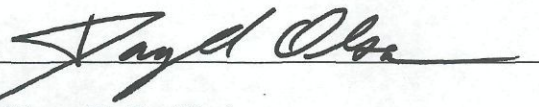
**Approvals:**

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB  
Kennewick, Washington  
This 12<sup>th</sup> day of March 2010

Approved and Signed on Behalf of the Water Board By:

Signed



Darrell Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

Date Mailed to WADOE Director: on or before 3/18/2010